

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

SCOTT KNIGHT,	:	
Plaintiff,	:	
vs.	:	Civil Docket No. 2:19-cv-04166-GCS-CMV
ANTHONY KITCHEN, M.D., <i>et al.</i> ,	:	Judge George C. Smith
Defendants.	:	Magistrate Judge Chelsey M. Vascura

**DEFENDANTS, SOUTHEASTERN OHIO REGIONAL MEDICAL CENTER,  
RHONDA M. ANDERSON, R.N., LISA A. CUNNINGHAM, R.N., AND  
TABITHA N. PETERS, R.N. MOTION TO STRIKE PLAINTIFF'S AMENDED  
COMPLAINT**

Plaintiff's Amended Complaint (Doc. Nos. 21 and 22) was filed out of compliance with Civil Rule 15 and without prior leave from this Court. Accordingly, these Defendants ask that Plaintiff's Amended Complaint be stricken. The basis of this Motion is set out more fully in the attached Memorandum in Support.

Respectfully submitted,

/s/ Warren M. Enders

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Tabitha N. Peters, R.N.*

## **MEMORANDUM IN SUPPORT**

### **I. PRELIMINARY STATEMENT**

Plaintiff Amended Complaint was filed outside the time provided for Amending as a Matter of Course. *See* Fed. R. Civ. P. 15(a)(1). Moreover, Plaintiff did not obtain consent from these Defendants or the Court before filing the Amended Complaint, which added claims against new Defendants not previously identified in the prior Complaint. As such, these Defendants ask that Plaintiff's Amended Complaint be stricken.

### **II. PROCEDURAL BACKGROUND**

This case was initiated on August 29, 2019 by Plaintiff's filing of the original Complaint in the Guernsey County Court of Common Pleas. (Doc. No. 2). This matter was removed to this Court on September 19, 2019. (Doc. No. 2). The Defendants named in the original Complaint were:

- Anthony Kitchen, M.D.
- Southeastern Ohio Regional Medical Center ("SORMC")
- The Guernsey County Sheriff's Office
- Jim Stoney, Guernsey County Jail Staff
- Michael Jeffrey, Guernsey County Jail Staff
- Tanner Jackman, Guernsey County Jail Staff
- Misty Pollock, Guernsey County Jail Staff
- Nurse Brittany, Guernsey County Jail Staff
- Brandon Cornelius, Guernsey County Jail Staff
- Jon Stiers, Guernsey County Jail Staff
- Nurse King, Guernsey County Jail Nurse
- Corrections Officer RO, Guernsey County Jail Staff
- Phil Lumpkins, Guernsey County Jail Staff
- Shane King, Guernsey County Jail Staff
- Tom Beckner, Guernsey County Jail Staff
- Michelle Norris, Guernsey County Jail Staff
- Chad Kerns, Guernsey County Jail Staff
- Rhonda Stage, Guernsey County Jail Staff
- Latoya Groh, Guernsey County Jail Staff
- Tim Reasoner, Guernsey County Jail Staff

- Daulton Lowry, Guernsey County Jail Staff
- Todd Knauf, Guernsey County Jail Staff

(Collectively, “The Guernsey County Defendants”)(Doc. No. 2). The Complaint also named “John Doe” and “Jane Doe” Defendants associated with Guernsey County Jail Staff. (*Id.*).

On December 6, 2019, a Civil Rule 26(f) meeting was held via teleconference between all counsel. (Doc. No. 13). At no point during this meeting did counsel for the Plaintiff mention an intention to file an Amended Complaint that would include additional claims against SORMC or any of its nursing staff members.

Approximately two weeks later, on December 18, 2019, this Court conducted a telephonic preliminary pretrial conference. (Doc. No. 14). During this conference, and in the order issued by the Court following the conference, the Court noted that while “the naming of pseudonymous defendants is permissible where the party requires discovery to identify the true identity of the defendants, the party must subsequently amend the complaint to reflect the discovered identities and effect service over those named parties within Rule 4(m)’s 90-day window.” (Doc. No. 14). Additionally, this Court granted Plaintiff a 60-day extension, until February 18, 2020, in which to serve Defendant Dr. Kitchen and “substitute in the true identity and serve the Jane Doe Defendant.” To reiterate, the only Jane and John Doe Defendants identified in the original Complaint were associated with “Guernsey County Jail Staff.” (Doc. No. 2). No mention was made in this Order regarding amending the Complaint to adding additional claims against SORMC or any of its nursing staff members.

On February 14, 2020, Plaintiff filed an Amended Complaint that included new Defendants not previously identified as Jane/John Does and new allegations against

SORMC. (Doc. No. 21 and 22<sup>1</sup>). The Amended Complaint also includes all the same Guernsey County Defendants, including jail staff members identified by partial names or pseudonyms. The new Defendants named in the Amended Complaint are members of SORMC's nursing staff, Rhonda M. Anderson, R.N, Lisa A. Cunningham, R.N., and Tabatha N. Peters, R.N. The Amended Complaint also included new factual allegations against these nurses that do not appear anywhere in Plaintiff's original Complaint. (*Compare* Doc. No. 2 to Docs. Nos. 21 and 22).

The Amended Complaint was filed nearly six months after the original Complaint and SORMC's Answer was filed. Well outside the time to file an Amended Complaint as a Matter of Course under Civil Rule 15(a)(1). Plaintiff did not receive leave of this Court or the consent of the other parties prior to the filing of the Amended Complaint as required by Civil Rule 15(a)(2). Accordingly, Plaintiff's Amended Complaint should be stricken.

### **III. LAW & ARGUMENT**

Civil Rule 15 governs the filing of amended Complaints. Under this Rule, a plaintiff may amend a pleading once as a matter of course within twenty-one days of serving the pleading, or within 21 days of a being served with a response. Fed. R. Civ. P. 15(a)(1)(A-B). After the 21-day windows have passed, a party may amend a pleading only "with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2).

Here, Plaintiff did not obtain leave of Court to file an Amended Complaint that asserts claims against new parties not previously identified under pseudonyms. Moreover, Plaintiff did not obtain consent from these Defendants to proceed with filing an Amended Complaint. Finally, Plaintiff's Amended Complaint was filed nearly five months after the 21-day period to amend as a matter of course had passed. As such,

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<sup>1</sup> There are two docket entries for Plaintiff's Complaint. It appears both Complaints are identical.

Plaintiff's Amended Complaint is improper under Civil Rule 15. The proper remedy for this failure to comply with the Civil Rules is to strike Plaintiff's Amended Complaint. *See Keithley Instruments*, 599 F. Supp.2d 908, 912 (N.D. Ohio 2009) (striking new causes of action not contemplated by court's prior grant of leave to amend); *Graves v. Mahoning County*, Case No. 3:10-cv-2821, 2011 U.S. Dist. LEXIS 93983, 2011 WL 3703950 \*4 (N.D. Ohio, Aug. 23, 2011)(a grant of leave based on representations made by counsel was not a pass for Plaintiffs to file "whatever amendments they saw fit.").

#### IV. CONCLUSION

For the forgoing reasons, these Defendants ask that this Court strike Plaintiff's Amended Complaint as being filed outside of the circumstances permitted by Civil Rule 15. Alternatively, to the extent this Court construes Plaintiff's filing of an Amended Complaint as a request for leave to file said Complaint, Defendants ask that they be given an opportunity to oppose Plaintiff's request for leave to file an Amended Complaint.

Respectfully submitted,

/s/ Warren M. Enders

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Anderson, R.N., Lisa A. Cunningham, R.N., and  
Tabitha N. Peters, R.N.*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the following, by regular U.S. mail, postage prepaid, and/or by email transmission, on the 28th day of February, 2020:

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